

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION
DEPARTMENT OF THE TREASURY

In the Matter of:)
STEPHEN S. SOVINSKY)
Former Chief Financial Officer and)
Institution-Affiliated Party of)
Eureka Homestead Society)
New Orleans, Louisiana)

Order No.: DAL-95-19
Dated: August 25, 1995

STIPULATION AND CONSENT TO THE ENTRY OF AN ORDER TO
CEASE AND DESIST FOR AFFIRMATIVE RELIEF

WHEREAS, the Office of Thrift Supervision ("OTS"), based upon information derived from the exercise of its regulatory responsibilities, has informed Stephen S. Sovinsky ("SOVINSKY"), former chief financial officer and institution-affiliated party of Eureka Homestead Society, New Orleans, Louisiana, OTS No. 03193 ("Eureka Homestead" or the "Institution"), that OTS is of the opinion that grounds exist to initiate an administrative cease and desist proceeding against SOVINSKY pursuant to Section 8(b) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. § 1818(b).¹

WHEREAS, SOVINSKY desires to cooperate with the OTS and to avoid the time and expense of such administrative proceeding and, without admitting or denying that such grounds exist, but admitting the statements and conclusions in Paragraph 1 below, hereby stipulates and agrees to the following terms:

1. All references to the U.S.C. are as amended.

1. Jurisdiction.

(a) Eureka Homestead is a "savings association" within the meaning of Section 3(b) of the FDIA, 12 U.S.C. § 1813(b) and Section 2(4) of the Home Owners' Loan Act ("HOLA"), 12 U.S.C. § 1462(4). Accordingly, it is an "insured depository institution" as that term is defined in Section 3(c) of the FDIA, 12 U.S.C. § 1813(c).

(b) SOVINSKY as former chief financial officer of Eureka Homestead is deemed to be an "institution-affiliated party" of the Institution as that term is defined in Section 3(u) of the FDIA, 12 U.S.C. § 1813(u).

(c) Pursuant to Section 3(q) of the FDIA, 12 U.S.C. § 1813(q), the Director of the OTS is the "appropriate Federal banking agency" to maintain an enforcement proceeding against a savings association and/or its institution-affiliated parties. The Director of the OTS has delegated to the Regional Directors of the OTS the authority to issue orders to cease and desist on behalf of the OTS where the respondent has consented to the entry of the order. Therefore, SOVINSKY is subject to the jurisdiction of the OTS to initiate and maintain a cease and desist proceeding against him pursuant to Section 8(b) of the FDIA, 12 U.S.C. § 1818(b).

2. OTS Findings of Fact. The OTS finds as follows:

(a) On or about February 14, 1990, SOVINSKY executed, as a witness to the signature of the president of Eureka Homestead, a document captioned "Customer's Agreement for Margin Accounts" (see attachment I).

(b) On or about June 18, 1991, SOVINSKY placed his signature, as vice president of Eureka Homestead, on the first and third pages of a document prepared by a brokerage firm (see attachment II) which, among other things, referenced that a review had been undertaken of Eureka Homestead's "trading activity to date", including the results, transaction costs and the attendant risks associated with such trading activities. The document further represented that any prior trading activity was ratified by the board of directors and was within the Institution's investment limitations and objectives.

(c) On or about January 26, 1993, SOVINSKY placed his signature, as vice president of Eureka Homestead, on the first and third pages of a document prepared by a brokerage firm (see attachment III) which, among other things, referenced that a review had been undertaken of Eureka Homestead's "trading activity to date", including the results, transaction costs and the attendant risks associated with such trading activities. The document further represented that any prior trading activity was ratified by the board of directors and was within the Institution's investment limitations and objectives.

(d) On or about April 19, 1993, SOVINSKY executed, as vice president and chief financial officer of Eureka Homestead, a document prepared by a brokerage firm (see attachment IV) which, among other things, authorized the Institution to establish and maintain accounts to engage in repurchase or reverse repurchase transactions, options, and to enter into agreements to borrow and lend against securities.

(e) OTS further finds that at all times relevant hereto, SOVINSKY was aware that the establishment or maintenance of a margin trading account by Eureka Homestead was not an authorized investment activity. Notwithstanding this knowledge, on at least the four occasions described above, SOVINSKY, while acting as chief financial officer and vice president of the Institution, executed documentation that facilitated unauthorized securities trading activities on behalf of Eureka Homestead. Based upon the foregoing, the OTS concludes that SOVINSKY engaged in unsafe and unsound practices and breaches of his fiduciary duty of due care.

3. Consent. SOVINSKY consents to the issuance by the OTS of the accompanying Order to Cease and Desist for Affirmative Relief ("Order"). SOVINSKY further agrees to comply with the terms of the Order upon issuance and stipulates that the Order complies with all the requirements of law.

4. Finality. The Order is issued under Section 8(b) of the FDIA, 12 U.S.C. § 1818(b). Upon its issuance by the Regional Director or designee for the Midwest Region, OTS, it shall be a final order, effective and fully enforceable by the OTS under the provisions of Section 8(b) and 8(i) of the FDIA, 12 U.S.C. § 1818(b) and (i).

5. Waivers. SOVINSKY waives the following:

(a) the right to be served with a written notice of the OTS's charges against him as provided by Section 8(b) of the FDIA, 12 U.S.C. § 1818(b);

(b) the right to an administrative hearing of the OTS's charges against him as provided by Section 8(b) of the FDIA, 12 U.S.C. § 1818(b);

(c) the right to seek judicial review of the Order, including, without limitation, any such right provided by Section 8(h) of the FDIA, 12 U.S.C. § 1818(h), or otherwise to challenge the validity of the Order; and

(d) any and all claims against the OTS, including its employees and agents, and any other governmental entity for the award of fees, costs or expenses arising under common law or under the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412.

6. Other Government Actions Not Affected.

(a) SOVINSKY acknowledges and agrees that the consent to the entry of the Order is for the purpose of resolving this OTS enforcement matter only, and does not resolve, release, discharge, compromise, settle, dismiss, or in any way affect any other civil or criminal proceeding which may be or has been brought by the OTS or another governmental entity.

(b) By signing this Stipulation and Consent to the Entry of an Order to Cease and Desist for Affirmative Relief, SOVINSKY agrees that he will not assert this proceeding, his consent to the entry of the Order, the affirmative relief provided by the Order and/or the entry of the Order, as the basis for a claim of double jeopardy in any pending or future proceeding brought by the United States Department of Justice or any other federal or state governmental entity. The OTS is of the view that the affirmative relief provisions of the Order are remedial and not punitive in nature, and SOVINSKY does not and will not contest this position.

7. Agreement for Continuing Cooperation. SOVINSKY agrees that, at the OTS's request, on reasonable notice and without

service of a subpoena, he will provide discovery and testify truthfully at any deposition and at any judicial or administrative proceeding related to any investigation, litigation or other proceeding maintained by the OTS relating to EUREKA, its holding companies, its subsidiaries and its institution-affiliated parties, except that SOVINSKY does not waive any privilege against self-incrimination under the Fifth Amendment of the United States Constitution. If SOVINSKY invokes a privilege against self-incrimination under the Fifth Amendment of the United States Constitution with respect to any matter about which the OTS inquires or the production of any document requested by the OTS and the OTS obtains a grant of immunity pursuant to 18 U.S.C. § 600 et seq., SOVINSKY agrees, consistent with any such grant of immunity, to provide discovery and testify truthfully at any deposition and at any judicial, administrative or investigative proceeding on the matter for which immunity is given.

8. Indemnification. SOVINSKY shall neither cause nor permit Eureka Homestead (or any successor or subsidiary thereof) to incur, directly or indirectly, any expense (including but not limited to, legal or other professional expenses) incurred relative to the negotiation and issuance of the Order, nor obtain any indemnification (or other reimbursement) from Eureka Homestead (or any successor or subsidiary thereof) with respect to such amounts. Any payments received by or on behalf of SOVINSKY in connection with this action shall be returned to the Institution.

WHEREFORE, SOVINSKY executes this Stipulation and Consent to the Entry of an Order to Cease and Desist for Affirmative Relief, intending to be legally bound hereby.

Accepted by:
Office of Thrift Supervision

By: *FR Casteel*
Frederick R. Casteel
Regional Director
Midwest Regional Office

Stephen S. Sovinsky
Stephen S. Sovinsky

Dated: 8-25-95

Dated: Aug. 11, 1995

UNITED STATES OF AMERICA
Before The
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DEPARTMENT OF THE TREASURY

In the Matter of:)
STEPHEN S. SOVINSKY)
Former Chief Financial Officer and)
Institution-Affiliated Party of)
Eureka Homestead Society)
New Orleans, Louisiana)

Order No.: DAL-95-19
Dated: August 25, 1995

ORDER TO CEASE AND DESIST
FOR AFFIRMATIVE RELIEF

WHEREAS, Stephen S. Sovinsky ("SOVINSKY"), former chief financial officer of Eureka Homestead Society, New Orleans, Louisiana ("Eureka Homestead" or the "Institution") is an "institution-affiliated party" within the meaning of Section 3(u) of the Federal Deposit Insurance Act ("FDIA"), and

WHEREAS, SOVINSKY has executed a Stipulation and Consent to the Entry of an Order to Cease and Desist for Affirmative Relief ("Stipulation"), which is incorporated herein by reference and is accepted and approved by the Office of Thrift Supervision ("OTS"), acting through its Regional Director; and

WHEREAS, SOVINSKY, in the Stipulation, has consented and agreed to the issuance of this Order to Cease and Desist for Affirmative Relief ("Order") pursuant to Section 8(b) of the FDIA, 12 U.S.C. § 1818(b);¹ and

1. All references to the U.S.C. are as amended.

WHEREAS, the Director of the OTS has delegated to the Regional Director of the OTS the authority to issue orders to cease and desist on behalf of the OTS where a party has consented to the issuance of the order.

NOW, THEREFORE, IT IS ORDERED THAT:

1. SOVINSKY shall not, without the prior written approval of the Regional Director for the Midwest Region of the OTS, seek, accept, or serve as an officer, director or other institution-affiliated party, within the meaning of 12 U.S.C. 1813(u), of Eureka Homestead.

2. In the event SOVINSKY shall become an institution-affiliated party within the meaning of Section 3(u) of the FDIA, 12 U.S.C. § 1813(u), of any "insured depository institution" or "insured credit union" as those terms are defined in Section 3(c) of the FDIA, 12 U.S.C. § 1813(c), and Section 101(7) of the Federal Credit Union Act, 12 U.S.C. § 1752(7), respectively, or with any holding company, subsidiary, service corporation or affiliate of an insured depository institution or insured credit union, SOVINSKY shall:

a. not engage or participate in any violations of any Federal banking laws or regulations, including, but not limited to, the FDIA, the Home Owners' Loan Act ("HOLA"), and regulations set forth at 12 C.F.R. Parts 500 to 599:

b. review and verify the truthfulness and accuracy of any information contained in any document that he executes or certifies, on behalf of such entity;

c. comply in all respects with the record-keeping regulation(s) applicable to the depository institution at which he may be employed or with which he may be affiliated, including the provisions of 12 C.F.R. § 563.170(c) (if the subject entity is a savings association, including its affiliate(s), subsidiary(ies) and service corporation(s)), and further, comply with all internal record keeping policies and procedures of such entity(ies);

d. prepare accurate and complete books and records of all business transactions by such entity and in accordance with generally accepted accounting principles (GAAP);

e. prepare accurate and complete reports and statements of condition of such entity in accordance with GAAP and in accordance with the regulations applicable to the depository institution at which he may be employed or with which he may be affiliated, including 12 C.F.R. Part 562 (Regulatory Reporting Standards) (if the subject entity is a savings association, or its affiliate(s), subsidiary(ies) and service corporation(s)).

3. Whenever issues arise that cause SOVINSKY to be unsure about statutory and/or regulatory compliance, or compliance with his obligations under this Order, SOVINSKY shall seek and obtain advice and guidance from competent legal counsel.

4. SOVINSKY shall present a copy of this Order to any entity described in paragraph two (2) above, where he, at any time in the future, seeks employment as an employee, officer or director.

5. From the effective date of this Order, SOVINSKY shall promptly respond to any request from the OTS for documents that the OTS reasonably requests to demonstrate compliance with this Order.

6. Any report or other document required by this Order to be submitted to the OTS shall be filed with the Office of Thrift Supervision, 122 West John Carpenter Freeway, Suite 600, Irving, Texas 75039-2010, Attn.: Regional Director. All reports and other documents shall be deemed filed when received by the OTS.

7. It is understood that the execution of this Order shall not be construed as an approval of any application or notices that are contemplated by SOVINSKY.

8. In the event any provision of this Order shall be declared invalid, illegal, or unenforceable; the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

9. All technical words or terms used in this Order, for which meanings are not specified or otherwise provided for by the provisions of this Order, shall, insofar as applicable, have meanings as defined in Chapter V of Title 12 of the Code of Federal Regulations, FDIA, or HOLA, or as such definition is amended after the execution of this Order, and any such technical words or terms used in this Order and undefined in said Code of Federal Regulations, FDIA, or HOLA, shall have meanings that accord with their best custom and usage in the savings and loan industry.

10. This Order shall be effective upon its issuance by the Regional Director and shall remain in effect until terminated, modified or amended by the OTS.

OFFICE OF THRIFT SUPERVISION

By: *FR Casteel*
Frederick R. Casteel
Regional Director
Midwest Regional Office

Dated: 8-25-95